

RECENT CONSISTORY COURT CASES

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Re: St Matthew, Dinnington

(Newcastle Consistory Court; Blckett-Ord Ch. September 1989)

Dinnington is a village in the former Northumbrian coalfield, North of Newcastle upon Tyne, now partly a dormitory suburb. Mr John Gibson is an inhabitant of long standing and his seven children all live there. Prior to her death in 1986, his wife Margaret asked that her grave should not be neglected, and her family felt strongly that it should not be grassed over, but kept as bare earth planted with flowers, and they have continued to maintain it in this way although the policy of the Parochial Church Council is to level and grass all graves in the relevant (new) part of the churchyard, to facilitate maintenance. When the PCC turfed the grave, the family removed the turves and replanted it. They also spent a considerable sum on a marble monument inscribed with the badge of the Salvation Army and the motto 'Blood and Fire'. A daughter (Mrs Bunting) petitioned on behalf of the family for a faculty 'to plant and flower my mother's grave, as we promised we would do'. The petition was opposed by the PCC on the ground that grassing over is for the general good. If this exception were allowed, there were others waiting to follow the precedent and the mowing of the Churchyard would become impossible. The Chancellor considered that the policy of the PCC should be supported and that the Gibson family had not shown sufficient grounds for the making of an exception in their case, and the Petition was dismissed. The monumental mason was ordered to pay the costs involved and of the proceedings. Fresh wording was subsequently negotiated with the widow by the Chairman of the DAC and approved by the Archdeacon and a Faculty was granted.

Re: St Bartholomew, Yarnton

(Oxford Consistory Court; Boydell Ch. November 1989)

The rector and churchwardens sought a faculty for the replacement and repositioning of the organ, the introduction of a nave altar, and various works of reordering. Much of the work, including the installation of the organ and the nave altar, had been done without the authority of the faculty. The church was listed as a Grade 1 building of special architectural or historic interest. Although the reason for the petitioners' unlawful acts had been the long delay in securing approval from the DAC, their conduct could not be excused. If the church were to lose the ecclesiastical exemption (from the listed building provisions of the Town and Country Planning Act 1971) its loss would be the consequence of the unlawful conduct of such parishes as Yarnton. On the merits of the petition, a faculty was granted in respect of the organ (which was not unsuitable and in performance had proved to be entirely satisfactory), and other matters of an uncontroversial nature. The proposals in relation to the nave altar had not, however, been the subject of sufficiently wide consultation so an experimental period of ten months only would be permitted. Meanwhile the petitioners were required to seek the advice of the DAC as to the design of suitable communion rails. An order for costs was made against the petitioners.

Re: Overstone Parish

(Peterborough Consistory Court, Coningsby Ch. December 1989)

A faculty for a memorial with granite kerbstones, which did not comply with the Diocesan Instructions, was refused. The petitioner's principal contention was that in the recent past such a faculty had been granted in respect of another grave within the same churchyard. That case, however, involved special circumstances in that the grave concerned simply completed an existing line of graves with similar kerbstones, in a part of the churchyard virtually full for burials. The introduction of kerbstones in the area proposed by the petitioner would be inconsistent with the appearance of surrounding graves. Moreover, the petitioner's late wife had not been resident in the parish for many years, whereas the memorial with kerbstones commemorated a regular worshipper who had lived in the parish and had a right to be buried in the churchyard. From an aesthetic and a practical point of view it was important that the kerbstones desired by the petitioner should not be installed.

Re: St James the Great, Gretton

(Peterborough Consistory Court, Coningsby Ch. 14 April 1990)

A faculty was granted for the sale of two silver gilt flagons, part of a set presented to the church by Sir Christopher Hatton in 1638. The flagons were kept in the Treasury at Peterborough Cathedral. In following *Re. St Gregory's Tredington* [1972] Fam. 236 and *Re. St Helen's Brant Broughton* [1974] Fam. 16 the Chancellor indicated that the Court should be slow to allow the sale of valuable items which had been used for sacred purposes over many years in a particular church and were historically and spiritually connected with that church. There was, however, jurisdiction to grant a faculty for sale if exceptional circumstances existed. The onus placed upon the petitioners was a heavy one; a faculty would not be granted unless (i) the vessels could no longer be used in the church for their intended purpose, and (ii) there was a pressing and urgent need to raise money for fabric repairs which could not be provided without the sale. On the facts of the case before him, there was an urgent need to carry out immediate work upon the tower, for which the church would be unable to find the necessary sums without considerable assistance. Without leave to sell the flagons there would be no practicable way of raising the necessary money. An alternative proposal, to reduce the height of the tower, was not reasonable, as such work would be contrary to established conservation principles and would be as expensive as repairing the structure. Owing to their value the flagons could no longer be kept in the church. The donation of the flagons had no spiritual significance other than that normally attaching to the gift of vessels used in connection with Holy Communion. The flagons could be distinguished from the other items in the set, because they were not intended for use on the altar and were made by a different silversmith.

Re: St Mary, Hayton

(Carlisle Consistory Court; Stinson Ch. June 1990)

A monumental mason submitted to the priest-in-charge an application on behalf of a widow for the erection of a headstone to commemorate her recently deceased husband.

The proposed wording was

LOVE YOU ALWAYS
WALLY
DEARLY BELOVED HUSBAND OF
MILLY BAKER
AND BELOVED DAD OF
STEPHEN, SUSAN, BARRIF,
TRACY AND MARK
AND A DEAR GRANDAD
WHO DIED 18th JUNE 1989

The priest-in-charge gave approval by telephone to the mason. On erection the headstone did not accord with the design submitted and the priest-in-charge referred the matter to the Chancellor. On a Petition for a Confirmatory Faculty, it appeared that the headstone was additionally inscribed with a Jaguar car, a red rose and a X after Wally, representing a kiss. At the hearing it emerged that SUSAN and TRACY were not daughters but daughters-in-law. The deceased was a restorer of motor vehicles, including at the time of his death a Jaguar. The Petition was opposed by the Diocesan Advisory Committee and by the Parochial Church Council. The monumental mason was cited to appear.

Held The object of a headstone was to mark the grave of the deceased; a focus for grief and a memorial for the family and descendants; and to reflect history. The wording would be sufficient if it showed the name and dates of the life of the deceased. Pet names were inappropriate. The words of the headstone in question focused not on the deceased but on his widow and family; were historically inaccurate; and were as ephemeral as a notice in the press. The 'X' was offensive in a place of Christian burial where the only relevant cross was the Cross of Christ. It was inappropriate in a spiritual setting to attempt a physical link between the living and the dead. To erect a stone other than in accordance with the approved design was a trespass. There was no objection to the occupation of the deceased being represented by design rather than by description, or to the rose, as decoration. A faculty for the headstone as erected was refused. The monumental mason was ordered to remove the headstone and substitute one with approved wording for which a Faculty would be granted.

Re: St Peter, Weston Favell

(Peterborough Consistory Court; Coningsby Ch. July 1990)

An incumbent without the authority of a faculty unlawfully permitted memorial plaques to be placed in a churchyard. After his resignation, his successor (also without the authority of a faculty) removed the plaques, and petitioned for leave to place them in a particular prepared site within the churchyard. The relatives of two of the persons commemorated cross-petitioned for the return of the plaques to their former positions. In granting the incumbent's petition and dismissing that of the cross-petitioners, the Chancellor held that he had to stand back from the individual difficulties which had arisen, and to decide what was in the best interests of the church and its people, both now and in future generations. The introduction of randomly-placed plaques, shrubs and flower containers had tended to damage the visual appearance and peacefulness of the churchyard. The proposal put forward by the incumbent was a sensible one which merited adoption, and it was inappropriate to make exceptions in the cases of the cross-petitioners.

Re: St Matthew, Little Lever

(Manchester Consistory Court; Spafford Ch. August 1990)

The vicar and churchwardens applied for a faculty for 'the introduction into the church of a wooden statute of the Virgin and Child as a visual statement of belief in the Incarnation'. The Chancellor held that there were no grounds for prohibiting the presence of the statute as a potential object of superstitious reverence. There was no reason to differ from the DAC and the majority of the PCC, who supported the petition on aesthetic grounds. The PCC, and not the Court, had the responsibility for deciding how the resources of the parish were to be used. Accordingly a faculty would be granted.

Re: St Mary, Lawford

(Chelmsford Consistory Court; Cameron Ch. October 1990)

The incumbent and churchwardens of a partly mediaeval church (listed as Grade 1) sought a faculty for the construction of an extension to the north aisle comprising an entrance hall, meeting room, vestries, kitchen, toilets and storage room with the consequential removal and repositioning of monuments. Five parishioners were parties opponent. The Chancellor held that there was a need for vestries and toilet facilities (which apart from an inadequate vestry had previously been lacking) and for a meeting room. It was important to integrate the next generation into church life and by bringing the Sunday School and young people's groups to a meeting room linked to the church there was a real prospect of achieving this. The design of the extension, which had the approval of the DAC, the local planning authority and English Heritage, was, on the evidence of those with expertise in aesthetic matters, pleasing and sensitive. There was no need for the exhumation of human remains, because the foundations were to be of raft construction. It was appropriate to permit the repositioning of the monuments, there being no objection from persons claiming a legal interest in any of them. The petition ought not to be dismissed because it would involve the felling of one tree and the pruning of others; but this work was to be carried out in an expert way and subject to the necessary consent for felling from the Diocesan Parsonages Board. A faculty was granted subject to further conditions relating to the use of the meeting room (which was not to be let to any outside body) and the repositioning of the monuments.

Re: St Hugh, Holts

(Manchester Consistory Court; Spafford Ch. October 1990)

The incumbent and churchwardens petitioned for a faculty to paint over wall murals in the sanctuary and church hall (the latter being a nave which was also used as a school). The PCC and the DAC supported the petition. The murals were large and colourful, the human figures having crude, unhappy faces. The Chancellor held that they were totally inappropriate as a background to worship and as an adornment of the sanctuary. A faculty was accordingly granted, subject to a photographic record of the murals being made before the work was undertaken.

Re: St Peter and St Paul, Scrayingham

(York Consistory Court; Coningsby Ch. October 1990)

The incumbent and churchwardens sought a faculty for the erection of a fence around the churchyard. The parties opponent (who did not appear at the

hearing) contended that the proposed line of the fence did not follow the true boundary of the churchyard but would be on land occupied by them. The chancellor held that he had jurisdiction to determine the line of the boundary, and that it was necessary to establish where the boundary lay before granting a faculty because the Court did not have the power to allow the alienation of curtilage so as to provide additional land for an adjacent property. Upon finding on the facts where the boundary ran, the Chancellor caused stakes to be placed in the ground so as to mark it, and granted a faculty for the erection of a fence along that line. For aesthetic reasons a hedge was to be planted beside the fence. An order for costs was made against the parties opponent, who had actively opposed the petition. The Court fees and disbursements were to be paid in the first instance by the petitioners (who were entitled to an indemnity from the parties opponent). The Archdeacon of York having become a petitioner after the resignation of the incumbent, it was reasonable that he rather than the churchwardens should pay the Court fees and disbursements, because the diocese had an interest in the *proper resolution of disputes of this nature*.

Re: Ryton on Dunsmore

(Coventry Consistory Court; Gage Ch. October 1990)

A petition for the introduction of a gravestone in the form of an open book, which was not recommended by the DAC and offended against diocesan regulations, was dismissed. There had to be very strong reasons before the faculty could be granted in respect of such a memorial. It would not as a general rule be a valid reason to make an exception that examples of breaches of the regulations already existed in the particular churchyard concerned. The church had to be vigilant against continuing bad practice.

Re: St Martin, West Drayton

(London Consistory Court; Newsom Ch. December 1990)

A faculty was granted for the building of an extension to a parish church, with a condition that work was not to start without the leave of the Court. The funds for the building were expected to be derived from sale of the existing church hall (standing on glebe land vested in London Diocesan Fund and leased to the PCC) and sale of the vicarage. Payment of the proceeds of sale of the former glebe land for the purpose of building the extension would be a breach of trust (Endowment and Glebe Measure 1976, Sections 19, 25 and 26). There was no resolution of the London Diocesan Fund concerning the sale of the vicarage. In these circumstances leave could not be given until definite and satisfactory proposals as to financing the work had been put forward. The War Graves Commission opposed the petition on the grounds that the extension would interfere with a war grave. The various Geneva Conventions (which indicated that the war dead once buried ought only to be exhumed in case of urgent public necessity) had not been incorporated by statute into English law and were not binding on the Court. Where, as in the present case, a pastoral necessity for the new building had been found, the Conventions were in any event satisfied and a transfer of the remains could properly be ordered. *Per curiam*: there cannot be two standards of protection afforded to burials by the Court. The standard was laid down authoritatively in *Re Dixon* [1892] P. 386.

Re: Christ Church, Mountsorrel

(Leicester Consistory Court; Seed Ch. December 1990)

A petition for a faculty for the re-ordering of the interior of a church was dismissed on the grounds that the petitioners had failed to discharge the burden of proving their case. The proposal was for the removal of choir stalls from the chancel and their installation elsewhere in the building, leading to the creation of a wider, carpeted space in the chancel. The Chancellor found that the space already available gave sufficient access to the communion rail and was not unduly narrow. Visually the chancel was not cluttered. In so far as the new space would (in the words of the petition) 'offer room for liturgical dance, etc.' the Chancellor declined, without supporting evidence, to accept that this was an effective expression of contemporary worship. Neither was there adequate evidence of support within the worshipping community, other than from the PCC.

Re: St John, Ranmoor

(Sheffield Consistory Court; Graham Ch. 1991)

A faculty was sought for the re-ordering of the interior of a 'most distinguished' church, involving the introduction of a nave altar. The Chancellor considered the first question to be whether it was right to permit alterations in so fine a church. The proper course when such a question arose was to approach the question from the liturgical standpoint and determine whether the proposals had distinct liturgical advantages. If not, it was usually best to leave well alone. The second question was whether the church was of such merit that, despite the liturgical advantages, alterations ought to be restricted to those absolutely necessary, or at any rate to those which made minimal difference to the building. On the merits there was no doubt that there were considerable liturgical advantages in the proposals, and they would not detract materially from the appearance of the church. A faculty was therefore granted.

Re: St Mary, Leighton Bromswold

(Ely Consistory Court; Gage Ch. January 1991)

A confirmatory faculty was sought in respect of electric lighting introduced into a church 'of great character and beauty' which was a Grade 1 listed building. The incumbent's explanation for failing to apply for a faculty was not remotely acceptable. The way in which the works came to be installed did not affect any decision about the works themselves. They were, however, on the evidence unsuitable. The petition was therefore dismissed. It was not sensible to make a further order for the removal of the lighting even if power to do so were given by Section 5 of the Faculty Jurisdiction Measure 1964. If the installation were not removed voluntarily, the Archdeacon would be able to apply for a faculty for its removal. Liberty to apply was granted, so as to enable discussion to take place on the future lighting of the church.

Re: St Mary, Warwick

(Coventry Consistory Court; Gage Ch. January 1991)

The rector and wardens of the Collegiate Church of St Mary applied for a faculty to remove railings outside the west entrance. Together with gates they had formed a barrier in front of the west doors. The gates had previously been removed pursuant to a faculty. The petitioners contended that the railings

performed no useful function and detracted from the architectural shape of the rotunda created by the tower. The party opponent suggested that the matter be considered with a scheme to improve the paving, and expressed concern that historical features in the tower were being lost. The Chancellor considered the building to be very important, so that the alteration of any feature had to be considered carefully. There was force in the argument that the railings diminished the effect of the rotunda. No good reason existed for delaying their removal. A faculty was granted, subject to the direction that the railings should be preserved in case some future use could be made of them.

Re: West Pennard Churchyard

(Bath and Wells Consistory Court; Newsom Ch. February 1991)

At common law every parishioner has a right of burial in the churchyard of the parish, a similar right being enjoyed by those whose names are on the electoral roll of the parish (Church of England (Miscellaneous Provisions) Measure 1976, Section 6(i)). As freeholder of the churchyard, the incumbent is also entitled to consent to the burial there of the remains of a person who has no legal right of burial, but the incumbent is required by Section 6(ii) of the same Measure to have regard to any general guidance given by the PCC. A person with a legal right of burial may apply to the Consistory Court for a faculty to reserve a grave space; such a faculty can also be applied for, with the concurrence of the Incumbent, by a person who does not have a legal right of burial. The grounds upon which a faculty is granted in the latter class of case vary; among them are the association of the petitioner with the church or with the parish, or the presence in the churchyard of the remains of relatives of the petitioner. No interment of a person not having a legal right of burial can take place, nor can a faculty be granted, unless the incumbent has signified his concurrence. The PCC cannot interfere with the powers of the Consistory Court to grant reservations of grave spaces; it can only enter appearance and seek to persuade the Court not to grant the faculty. On the merits of the case before the Court, the churchyard was not on the point of being full, and the petitioner (aged 36) regarded the churchyard as her natural resting place because her mother's remains were there and her father lived in the parish. There was no ground, despite the petitioner's age, for denying her the assurance of a reserved space. Accordingly a faculty was granted.

Re: St Michael, Stoney Stanton

(Leicester Consistory Court; Seed Ch. February 1991)

A faculty was granted for the restoration of the timber reredos in the sanctuary and liturgical re-ordering to create a nave altar using existing furniture, with the positioning of the choir in the south aisle, the provision of a baptistery in the north aisle, and the creation of a Lady Chapel in the chancel. The existing layout was unsatisfactory for modern Eucharistic worship. The petitioners had shown a need for change. The proposals were supported by the DAC and by English Heritage. There were only two parties opponent. The onus was upon the petitioners to establish support not on the objectors to establish opposition. The fact that there were two unanimous resolutions of the PCC, and the fact that the incumbent had spoken to the objectors to allay their fears, tipped the balance in favour of the petitioners.

Re: St James, Bradford

(Bradford Consistory Court; Savill Ch. April 1991)

The incumbent and churchwardens, with the full support of the parishioners, sought a faculty for the re-ordering of the chancel of a Victorian church, a Grade II listed building which was the work of the Bradford architects Andrews and Pepper. The petition was opposed by the Victorian Society, which was joined as party opponent. The proposed work included the removal of the pulpit, the extension and carpeting of the sanctuary, and the provision of a new communion table together with other furniture. Applying *Re: St Mary, Banbury* (1987) Fam. 136 and *Re: All Saints, Melbourn* [1990] 1 WLR 833 the Chancellor held that (i) the listed description applied only to the external structure, (ii) in any event the character of the building would not be adversely affected by the proposals, and (iii) the petitioners had established a necessity for change, primarily on liturgical grounds, in a church which had already undergone changes in its history. A faculty was granted. The party opponent was ordered to pay costs because its objection was both unnecessary and unreasonable, the petitioners (with the support of the DAC and the Council for the Care of Churches) having an overwhelming case which the party opponent should have recognised at least after pre-trial disclosure of documents.